

CH



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/441,936	11/17/1999	GUST H. BARDY	90980054-1	5202

24737 7590 10/04/2004

PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

MULLEN, KRISTEN DROESCH

ART UNIT	PAPER NUMBER
----------	--------------

3762

DATE MAILED: 10/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/441,936	Applicant(s) BARDY ET AL. CN	
	Examiner Kristen Mullen (formerly Droesch)	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-12, 15 and 20-23 is/are allowed.
- 6) ☐ Claim(s) 13 and 17-19 is/are rejected.
- 7) ☒ Claim(s) 14 and 16 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 November 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The indicated allowability of claim 17 is withdrawn in view of the newly discovered reference(s) to Adams et al. (5,490,862). Rejections based on the newly cited reference(s) follow.

Claim Objections

2. Claim 16 is objected to because of the following informalities: Claim 16 is missing "calculating a difference between a QRS" which should be at the beginning of line 15. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 13, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams et al. (5,490,862).

Regarding claim 13, Adams et al. shows a method, comprising: receiving a cardiac signal from a patient; determining from the signal with a portable analyzer whether the patient is experiencing atrial fibrillation; receiving a shock command from an operator; and shocking the patient with a portable shock generator in response to the shock command if the patient is experiencing atrial fibrillation (Col. 2, lines 16-36, Col. 17, line 60-Col. 18-line18).

With respect to claim 18, Adams et al. further shows determining from the cardiac signal with the portable analyzer whether the atrial fibrillation terminates after shocking the patient (Col. 18, lines 7-10).

Regarding claim 19, Adams et al. shows shocking comprises shocking the patient during a rising edge of an R wave in the cardiac signal (Fig. 6, Col. 4, lines 17-21; Col. 13, lines 46-58)

With respect to claim 17, Adams et al shows receiving a cardiac signal from a patient, determining from the signal whether the patient is experiencing atrial fibrillation wherein the step of determining comprises determining the patient's heart rate, and determining the patient is not in atrial fibrillation if the heart rate is outside a predetermined range (Col. 7, line 49-Col. 8, line 67, Fig. 3).

Assuming arguendo that the Adams et al. analyzer and shock generator is not portable, the examiner points out that analyzer and shock generator is indeed portable since it is carried in the body by the patient. The claims do not recite that the analyzer and shock generator are non-implantable.

5. Claim 13 is rejected under 35 U.S.C. 102(b) as being anticipated by Alt et al. (5,792,205).

Regarding claim 13, Alt et al. shows a method, comprising: receiving a cardiac signal from a patient; determining from the signal with a portable analyzer whether the patient is experiencing atrial fibrillation; receiving a shock command from an operator; and shocking the patient with a portable shock generator in response to the shock command if the patient is experiencing atrial fibrillation (Col. 2, lines 11-14, Col. 3, lines 25-36).

Assuming arguendo that the Alt et al. analyzer and shock generator is not portable, the examiner points out that analyzer and shock generator is indeed portable since it is carried in the

Art Unit: 3762

body by the patient. The claims do not recite that the analyzer and shock generator are non-implantable.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Alt et al. (5,792,205) in view of Adams (5,207,219). Alt et al is as explained before. Although Alt. et al. fails to specifically teach shocking the patient during a rising edge of an R wave in the cardiac signal, attention is directed to Adams et al. which teaches shocking the patient during a rising edge of an R wave in the cardiac signal in order to avoid inducing ventricular fibrillation (Col. 8, lines 10-22). Therefore, it would have been obvious to one with ordinary skill in the art at the time the invention was made to modify the method of Alt et al. with the step of shocking the patient during a rising edge of an R wave in the cardiac signal as Adams et al. teaches in order to avoid inducing ventricular fibrillation.

Allowable Subject Matter

7. Claims 1-12, 15, and 20-23 are allowed.
8. Claim 16 would be allowable if rewritten or amended to overcome the minor informality objection set forth in this Office action.
9. Claim 14 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art of record fails to teach or suggest a method comprising applying defibrillator pads to a patient, receiving a cardiac signal from a patient via the defibrillator pads; determining from the signal with a portable analyzer whether the patient is experiencing atrial fibrillation; receiving a shock command from an operator; and shocking the patient via the defibrillator pads with a portable shock generator in response to the shock command if the patient is experiencing atrial fibrillation.

Response to Arguments

10. Applicant's arguments with respect to claims 13, 18, and 19 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

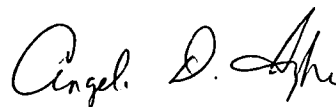
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristen Mullen (formerly Droesch) whose telephone number is 703-605-1185. The examiner can normally be reached on 10:30 am-6:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703-308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


kdm



ANGELA D. SYKES
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700